

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FILED

JUL 23 2015

U.S. DISTRICT COURT
EASTERN DISTRICT OF MO
ST. LOUIS

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRIAN GERKENS,

Defendant.

No.

4:15CR340 AGF/NAB

INDICTMENT

The Grand Jury charges that:

COUNT I

Introduction

The Contracting Model

1. The Veterans Entrepreneurship and Small Business Development Act of 1999 established an annual goal of awarding at least three percent of the total value of all federal prime and subcontract awards to small businesses owned and controlled by service-disabled veterans ("SDVs"). The Veterans Benefits Act of 2003 added a contracting mechanism to the 1999 law to help federal agencies reach this three percent goal. The mechanism established by the 2003 law is known as the service-disabled veteran-owned small business program or "SDVOSB."

2. A business must meet the following criteria to qualify for the SDVOSB program:

- a. Majority owned by a veteran with a service-connected disability as determined by the United States Department of Veterans Affairs;
- b. The veteran must receive 51% or more of the company's profits or distributions;

c. The veteran must control the day-to-day management, daily operations and long term decision making of the business;

d. The veteran must hold the highest officer position in the business.

3. Certain government agencies set aside certain contracts for SDVOSBs only. Such contracts can only be bid on and awarded to SDVOSBs and the set aside nature of the work is expressly set forth in the bid solicitation language.

4. The General Services Administration (GSA) maintains two central databases to be used by federal agencies collecting information about federal contractors, including contractors seeking SDVOSB work, including set aside work. A contractor seeking set aside or other work as an SDVOSB makes representations about the nature of the company through these databases upon which the contracting agencies rely.

The Individuals, Companies and the Contract

5. At all relevant times, the defendant, Brian Gerkins, was an individual residing in the Eastern District of Missouri working in the building maintenance industry.

6. At all relevant times, "GY" was a retired law enforcement officer residing in the Eastern District of Missouri. "GY" was a service-disabled veteran due to a hearing loss suffered while in the military service of the United States.

7. Before 2007, Gerkins and Young did not know one another.

8. In early 2007, Gerkins was helping to manage a building maintenance contract in St. Louis and, with his employer, became aware of the opportunities for SDVOSBs to obtain set aside contracts through the aforementioned contracting model.

9. On May 29, 2007, Gerkins and Young incorporated True Blue Building Maintenance

("True Blue") under the laws of the State of Missouri. True Blue was incorporated after the GSA announced the contract solicitation for cleaning the Robert A. Young Federal Building ("RAY Building") in downtown St. Louis that is the subject of this case (the "Young Building contract").

10. At the time he met and solicited Young to incorporate True Blue, Gerkens was an employee of Tri-Ark Industries, a company then operating numerous building cleaning and maintenance contracts at federal buildings around the country including in the Eastern District of Missouri ("Tri-Ark"). Gerkens reported to "JC", who managed the day-to-day operations of Tri-Ark with the company owner Regina Danko. Tri-Ark had been in business for many years by 2007 and operated out of a headquarters in the Philadelphia, Pennsylvania suburbs.

11. Once Gerkens had incorporated True Blue with Young, "JC" and Danko arranged the legal paperwork for True Blue and Tri-Ark to form a joint venture, with majority control residing with True Blue, called Diversified Ventures ("Diversified" or "the company"). Diversified was created to bid on the Young Building contract as a favored SDVOSB. Gerkens, "JC" and Danko made representations relating to the control and operation of Diversified, Tri-Ark and True Blue by sending and causing to be sent wire communications to the GSA computer-based contracting databases involved in the SDVOSB certification process.

12. The Young Building contract was awarded on June 4, 2007 and, by operation of a number of extensions, expired on or about July 31, 2012.

The Scheme and False Statements

13. On paper, Diversified appeared to the GSA and other contracting authorities to be a SDVOSB which complied with the rules and regulations for such companies. For example, Gerkens, "JC" and Danko represented in the contract application that Young would be involved in the day-to-day operations of the joint venture. In truth, Young had no meaningful involvement in

the business and only went to the building at which the work was being done a few times.

Additionally, Gerkens, "JC" and Danko represented in the contract application that Young would receive a majority of the company's profits. In truth and fact, Young received a very small fraction of the profits from the Young Building Contract. The small amount Young did receive was determined entirely by Gerkens, "JC" and Danko. At the expiration of the Young Building contract in 2012, Young was informed Tri-Ark would not be doing business with him anymore.

14. Danko and "JC" made all of the decisions about True Blue's operations, including the compensation of its principals, even though they held no office or employment with True Blue.

The Payments to Diversified Under the Young Building contract

15. Beginning on October 10, 2007 and continuing through August 16, 2012, in reliance on, among other things, the aforementioned misrepresentations about the workings and control of True Blue and the role of Young, the United States GSA made more than one hundred and forty separate payments to Diversified under the Young Building contract.

16. The total amount collected under the Young Building contract by Diversified was \$8,742,272.19.

The Offense Conduct

17. Between on or about May 1, 2007 and continuing through on or about July 31, 2012, the defendant,

BRIAN GERKENS,

did combine, conspire and confederate with others known and unknown to commit offenses against the United States, to wit: false statements in a matter within the jurisdiction of the United States in violation of Title 18, United States Code Section 1001, theft of government funds in violation of Title 18, United States Code Section 641 and wire fraud in violation of Title 18,

United States Code Section 1343 and, during the existence of said agreement, one or more over acts in furtherance and execution of the same was committed by a member of the conspiracy, to wit: in excess of fifty claims for payments of government funds by Diversified.

All in violation of Title 18 United States Code Section 371.

A TRUE BILL

FOREPERSON

RICHARD G. CALLAHAN
United States Attorney

GWENDOLYN E. CARROLL
Assistant United States Attorney